

### **Remarks**

Claims 1-6 and 8-11 are pending. Claims 7 and 12-24 have been canceled as being drawn to non-elected subject matter. Claims 1-6 and 8-11 stand rejected. Claims 1, 2, 4, 5 and 9-11 have been amended. Claim 4 has been amended to remove “with angled sides” from the Markush group element “Polygons”; this amendment does not reflect a change in the scope of the invention for which protection is sought because a polygon necessarily comprises “angled sides.”

Importantly, the claim amendments and cancellations should not be construed to be an acquiescence to any of the claim rejections. Rather, the amendments and cancellations are being made solely to expedite the prosecution of the above-identified application. The Applicants expressly reserve the right to further prosecute the same or similar claims in subsequent patent applications claiming the benefit of priority to the instant application. 35 USC § 120.

### **Response to Claim Rejections based on 35 USC § 102(b)**

Claims 1-6 and 8-11 stand rejected as being anticipated by Brocken (US D198,591). The Examiner contends that Brocken discloses a tray substantially as claimed, comprising a plurality of open-ended cavities having a plurality of ribs protruding into the cavities, which ribs extend the full length of each side, are uniform in size, evenly spaced, and longitudinally positioned along and parallel to the sides of the cavities. The Applicants respectfully traverse.

The tray disclosed by Brocken is not open-ended at both ends of the constituent cavities. Inspection of Figures 2 and 3 of Brocken reveals that what is described as the “bottom” of the tray consists of substantially closed-ended cavities, each of which comprises an aperture. Further, the same Figures lead the Applicant to conclude that the areas defined by the individual apertures are less than the solid (i.e., closed) areas of the bottom ends in which they are placed. In other words, the Applicants respectfully assert that the bottom of a particular cavity should be characterized as more closed than open because the aperture appears to constitute less than half the area defined by bottom end of the cavity. Consequently, the Applicants respectfully contend that the cavities in the tray disclosed by Brocken are not open-ended at both ends.

To clarify the distinction between the disclosure of Brocken and the subject-matter claimed in the instant application, the Applicants have amended claim 1 to recite “wherein said cavity is open-ended at both ends.” This amendment does not reflect a change in the scope of the invention for which protection is sought herein because the original claim language (i.e., “open-ended”) was intended to convey being open-ended at both ends. Nevertheless, the Applicants have amended claim 1 to provide greater clarity to the public.

The amendment to claim 1 finds explicit support in the application as filed. First, Figures 2 and 3 of the instant application unambiguously depict a tray with cavities that are open-ended at both ends. Moreover, the specification (e.g., page 6, lines 25-27) describes certain embodiments of the invention that directly support the amendment to claim 1.

In addition, the present invention describes an open-ended cavity. Unlike the prior art which describes closed bottom cavities or cavities that have very small apertures at the bottom, the present invention describes an evenly sized open-ended cavity.

Further, the specification (e.g., page 6, lines 10-13) characterizes one of the shortcomings of the prior-art trays to be having partially or completely closed-ended cavity bottoms.

Unfortunately, traditional containers for the growth plugs encourage root spiraling, facilitating damage to the plant at transplantation by preventing an adequate soil-air interface. The solid base and sides found in traditional containers prevent air flow to any part of the plug except the top of the plug.

Accordingly, the Applicants respectfully request the withdrawal of the rejections of claims 1-6 and 8-11 based on 35 USC § 102(b).

**Fees**

The Applicants believe no fee is required in connection with the filing of this paper. Nevertheless, the Director is hereby authorized to charge any required fee to our Deposit Account, **06-1448**.

**Conclusion**

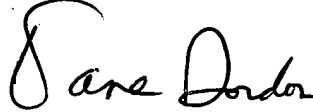
In view of the above amendments and remarks, it is believed that the pending claims are in condition for allowance. The Applicants respectfully request reconsideration and withdrawal of the pending rejections. The Applicants thank the Examiner for careful consideration of the present case. If a telephone conversation with Applicants' Attorney would expedite prosecution of the above-identified application, the Examiner is urged to contact the undersigned.

Patent Group  
FOLEY HOAG LLP  
155 Seaport Boulevard  
Boston, MA 02210

(617) 832-1000  
(617) 832-7000 (FAX)

Date: August 26, 2005

Respectfully submitted,  
FOLEY HOAG LLP

A handwritten signature in black ink, appearing to read "Dana M. Gordon", written over a horizontal line.

Dana M. Gordon, Ph.D.  
Registration No. 44,719  
Attorney for Applicants